

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

ROBERT BINYARD,

Plaintiff,

- versus -

DETECTIVE ROSA MCBRIDE; POLICE
OFFICERS JOHN DOE 1-5,

Defendants.

MEMORANDUM
AND ORDER

12-CV-3521

JOHN GLEESON, United States District Judge:

Robert Binyard filed this *pro se* action pursuant to 42 U.S.C. § 1983 against the City of New York (“City”), Detective Rosa McBride, and five unidentified police officers. On December 14, 2012 the City moved to dismiss the complaint as against it pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 12(b)(6). City Mot. Dismiss, ECF No. 12; *see also* City Mem. in Support, ECF No. 14. On January 25, 2013 I granted the City’s motion for the reasons stated on the record.

On April 26, 2013 McBride – represented by Corporation Counsel for the City – moved to dismiss the complaint as against her pursuant to Fed. R. Civ. P. 12(b)(6). McBride Mot. Dismiss, ECF No. 22; *see also* McBride Mem. in Support, ECF No. 24. Binyard did not file opposition papers to the motion. He also did not appear on June 28, 2013 at oral argument on the motion. Accordingly, McBride’s motion to dismiss the complaint is granted as unopposed.

Moreover, the only plausible claim as to which Binyard has standing appears to be a Fourth Amendment claim that McBride unlawfully “seized” Binyard’s property by damaging the handle to his door. I find McBride’s argument that this action did not constitute a

“seizure” for purposes of the Fourth Amendment to have merit and further grant the motion on these grounds.

So ordered.

John Gleeson, U.S.D.J.

Dated: July 1, 2013
Brooklyn, New York